

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

STATE OF MISSOURI, ex rel.,)	
JEREMIAH W. NIXON,)	
Attorney General of Missouri,)	
)	
Plaintiff,)	
)	
v.)	No. 06-4063-CV-C-NKL
)	
JANET L. CANDELA, Register No. 87154,)	
)	
Defendant.)	

ORDER

On July 5, 2006, the United States Magistrate Judge recommended plaintiff's motion for remand be granted and this case be remanded to the Circuit Court of Cole County, Missouri, and that costs be assessed against defendant Candela. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

A de novo review of the record, including the exceptions filed by defendant Candela on July 31, 2006, convinces the court that the recommendation of the Magistrate Judge is correct and should be adopted. Missouri courts have adequate remedies to address Candela's challenge to the application of the Missouri Incarceration Reimbursement Act to her inmate funds, and a federal question has not been plead. The artful pleading doctrine does not alter the result in this case.

Plaintiff is advised that 28 U.S.C. § 1447(d) limits appellate review of the order of remand. She is also notified that if she decides to file an appeal with the United States Court of Appeals for the Eighth Circuit, she will be required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). In Henderson, the Eighth Circuit stated that by filing a notice of appeal, the prisoner/appellant consents to the deduction of the initial partial appellate filing fee and the remaining installments from the prisoner's account by prison officials.

IT IS, THEREFORE, ORDERED that the Magistrate Judge's July 5, 2006 Report and Recommendation is adopted. [5] It is further

ORDERED that this case is remanded to the Circuit Court of Cole County, Missouri, and costs are assessed against defendant Candela. [4] It is further

ORDERED that defendant Candela's motion of July 31, 2006, for leave to add a counterclaim is denied, without prejudice to consideration by the Circuit Court of Cole County, Missouri. [9] It is further

ORDERED that defendant Candela's motion of July 31, 2006, for recusal of the United States Magistrate is denied. [6]

/s/

NANETTE K. LAUGHREY
United States District Judge

Dated: November 16, 2006
Jefferson City, Missouri